IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.3823/07
Ladu Singh Vs. State of Raj. & Ors.

23.05.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.S. Rathore for petitioner.
Shri B.S. Chhaba, Deputy Government Advocate for State.

Issue notice. Notice be served on Shri B.S. Chhaba, the learned Deputy Government Advocate who is present in Court.

Learned counsel for the petitioner submitted that the respondents are proceeding to take action against him in an administrative enquiry under section 39(2) for his removal on account of the disqualification with which admittedly he suffered prior to his election on 31.1.2005 on the post of Sarpanch, Gram Panchayat Kotda, Panchayat Samiti Jawaja, District

Ajmer as the petitioner having third child born on 20.9.96 i.e. after the cut off date of 27.11.1995 as provided for in Section 19 (l) and additionally another disqualification that the petitioner concealed the fact of pendency of criminal case in which cognizance against him has been taken at the time of filing of nomination. The preliminary report has been submitted by the Development Officer and the Divisional Commissioner is now proceeding to take action against the petitioner for his removal from the office of Sarpanch, Gram Panchayat Kotda, Panchayat Samiti Jawaja, District Ajmer.

Learned Deputy Government Advocate opposed the writ petition and submitted that the petitioner concealed both the information, therefore he is disqualified to context the election and therefore

Divisional Commissioner is well within his right in seeking to proceed against the petitioner in accordance with provisions of Section 39(2) read with 19(l) & 19(gg) of the Act.

Controversy raised in this case is squarely covered by the decision of Larger Bench in the case of Smt. Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2.4.2007 wherein it was held as under:-

> "that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules."

Following the view taken by the larger bench in Smt. Sameera Bano, supra, I find that the action of the respondents in proceeding against the petitioner in

administrative enquiry for his removal on account of violation of Section 19(l) and 19(gg) is declared as illegal and the petitioner is held entitled to continue to hold the office of Sarpanch, Gram Panchayat Kotda, Panchayat Samiti Jawaja, District Ajmer.

The writ petition is accordingly allowed.

(Mohammad Rafiq),J.

Rs/-